

LS 5-1872 a

OGC Has Reviewed

31 August 1955

MEMORANDUM FOR: Chief, FE

SUBJECT : Propriety of Remittance of Foreign Post Differential and Quarters Allowance, Case of [REDACTED]

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REFERENCE : Your Memorandum dated 22 August 1955, same Subject

1. Your memorandum and the attached memorandum from the Chief, Payroll and Travel Branch, Finance Division, requested the opinion of this Office as to the propriety of remitting the Foreign Post Differential and Quarters Allowance appropriate to [REDACTED] to Mrs. [REDACTED] for the period of her tour of duty with this Agency in [REDACTED].

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2. The relevant facts are these: Mrs. [REDACTED], nee [REDACTED], had been a staff employee of this Agency for over five years in May 1952. At that time she accepted an assignment under [REDACTED] cover to [REDACTED]. About three weeks after her arrival in [REDACTED], she was married to [REDACTED], then an employee of [REDACTED] in [REDACTED]. From the file, it would appear that she had been engaged to Mr. [REDACTED] at the time she left the States. For that period of her duty in [REDACTED] prior to her marriage on 28 June 1952, Mrs. [REDACTED] drew a Quarters Allowance and a Foreign Post Differential appropriate to her grade. Immediately following her marriage these two allowances were stopped. Subsequently she claims these allowances for the period between the date on which they were stopped and the date on which she left [REDACTED]. In a memorandum dated 7 March 1955 to the Chief, Payroll and Travel Branch, Finance Division, from the Director of Personnel, the latter denied Mrs. [REDACTED] claim for a post differential but declared her to be entitled to an appropriate fraction of a quarters allowance pursuant to Section 236.2 c.(1) of the Standardized Government Civilian Allowance Regulations (Foreign Areas). Both of her claims are presented again to this Office in your memorandum.

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3. First we take up the question of her entitlement to quarters allowance. Entitlement to a quarters allowance in Mrs. [REDACTED] case is a function of the provisions of Section 236.2 c.(1) of the Standardized Government Civilian Allowance Regulations (Foreign Areas). This Section, in relevant part, reads as follows:

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"The quarters allowance for a female officer or employee residing with her husband who is capable of self-support but who (i) is not in the military service of the United States; (ii) is not employed by the Government; or (iii) if employed by the Government is ineligible for a quarters allowance shall not exceed one-half of the joint expenses for quarters or one-half the maximum 'with family' rate for her personnel classification, . . . whichever is less."

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4. So far as we can tell from the record, Mr. [REDACTED] was not in the military service of the United States. While his relationship with [REDACTED] may vicariously have rendered him a federal employee, this consideration need not be examined as the record states that he was not receiving a quarters allowance. These things being so, and against the background of the quoted regulation, we agree with the Director of Personnel that Mrs. [REDACTED] would be entitled to a quarters allowance which either (a) would not exceed one-half of the joint expenses for quarters or (b) did not exceed one-half the maximum "with family" rate for her personnel classification, whichever would be lower.

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5. We come now to the question of her entitlement to a foreign post differential. Her entitlement here is a function of the provisions of Section 2.3 a. of the Standardized Differential Regulations (Foreign Areas). This Section provides as follows:

"In order to be eligible for foreign post differential an employee must be a citizen or national of the United States and the employing agency must determine that the employee is located at the post because of his employment by the United States. This includes, but is not necessarily limited to, United States citizens or nationals in the following groups:

- a. Those recruited or transferred from the United States, except in the case of the spouse of a person employed, stationed or resident in the area, where the agency concerned determines that the spouse's presence there is primarily in order to be with such individual." (Emphasis supplied)

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Mrs. [REDACTED] entitlement turns on the question of whether she was in [REDACTED] primarily at the behest of the Government or primarily to be with her husband. If the former, her entitlement is clear. If the latter, her lack of entitlement is equally clear.

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6. The arguments on Mrs. [REDACTED] behalf emphasize her own assertions as to why she chose to work in [REDACTED], her previous service with the Agency, the excellence of her work and her devotion to it and the fact of her having been told, prior to her departure, that she would receive the claimed allowances. Her one-time Chief of Station at [REDACTED], now on PCS assignment in Headquarters, has informed us that he believes that she accepted assignment in [REDACTED] and remained there, not only for her prescribed tour but also for a nine-months period thereafter, primarily because of her devotion to duty. Perhaps indicative of another interpretation are the facts that Mrs. [REDACTED] had made known her intention to marry Mr. [REDACTED] to the Chief, FE, prior to her departure for [REDACTED] and that she and her husband returned to Washington together at the conclusion of her tour and reassignment PCS to Washington. She has since resigned from the Agency.

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7. It is difficult to decide, post facto and without an intimate knowledge of the circumstances and the persons concerned, just what Mrs. [REDACTED] state of mind in the premises was. We note that the Director of Personnel refused to authorize the post differential because he had been told that Mrs. [REDACTED] accepted the assignment to [REDACTED] in order to marry and be with her husband -- this by an unidentified person in the FE Division. His evident determination that her presence in [REDACTED] was not primarily in the interest of the government does not strike us as being an unreasonable one -- either on the basis of this information or in view of what one might call the nature of things. For the converse of Mrs. [REDACTED] position is, in the first place, that despite her evident engagement to Mr. [REDACTED], she would have been willing to accept an assignment to a place other than where her fiancé was at the time she accepted the [REDACTED] assignment and, in the second, that the man to whom she was married and whose bed and board she shared was secondary, in her estimation, to her medium-level government job. With deference to Mrs. [REDACTED], we find these propositions difficult to accept.

8. As for her having been told that she would receive the allowances, this contention would not seem to support her claim. It is a long-standing rule in the federal service that the government cannot be responsible for the unauthorized acts of its agents and representatives. And, in view of the pertinent regulations, such a statement, if made, was made without authority.

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9. On the basis of the foregoing and of the information made available to this Office, it is our opinion that Mrs. [REDACTED] is entitled to a quarters allowance for the period 28 June 1952 until the end of her tour of duty in [REDACTED] as set out in paragraph 4 above, and that there is nothing in the record to show that, as a legal matter, the administrative determination by the Director of Personnel that she was not entitled to the foreign post differential was either arbitrary or capricious.

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Office of General Counsel

Attachments: Memo for OGC fr C/FE,
dt'd 22 Aug 55, same
subject, w/attachments

cc: Chief, Payroll and Travel Branch, PD

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OGC/ [REDACTED]

Orig & 2 - Addressee
1 - C/Payroll & Travel, PD
v2 - Subject
2 - Signer
1 - Chrono.